IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 5219 of 2006
Date of Decision: 4.12.2006

Smt. Jasbir Kaur ...Petitioner

Versus

Sh. Ujjal Singh Sahni and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Mahesh Gupta, Advocate, for the petitioner.

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned first Appellate Court on 18.8.2006, whereby the application for restoration of the objections was allowed, subject to the condition that the petitioner will pay the arrears of rent at the agreed rate from August, 2003 till August 2006.

The matter was referred to an Arbitrator in terms of the condition in the agreement of lease, whereby the premises was let out to the petitioner at the monthly rent of Rs.3800/-. The award dated 20.12.2003 rendered by the Arbitrator was disputed by way of objections under Section 34 of the Arbitration and Conciliation Act, 1996, before the trial Court. The said objections were dismissed for want of prosecution on 21.12.2005. In an application for restoration, the counsel for the respondent has made a statement that he has no objection if the objection petition is restored provided the petitioner deposits the arrears of rent/damages. The learned trial Court has passed an order for restoration of the objection petition

subject to payment of agreed rate of rent.

Learned counsel for the petitioner has vehemently argued that the the learned trial Court could not have imposed the condition for payment of arrears of rent as the payment of rent was not subject matter of dispute between the parties before the learned trial Court. As and when any eviction petition is filed, the tenant shall make the payment of rent but such condition could not have been imposed by the learned trial Court, while passing an order of restoration of the objection petition.

Learned counsel for the petitioner has further argued that earlier the landlord filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 on the ground that the petitioner has not paid arrears of rent @ Rs.3800/- p.m. with effect from August 2003. In reply to the said eviction petition, the petitioner has raised a counter claim, claiming a sum of Rs.30,000/- on the ground of whitewash and minor repairs since 2002 to 2006. It is contended by the learned counsel that the landlord has withdrawn the eviction petition on 21.7.2006. However, the counter claim of the petitioner is still pending consideration before the learned Rent Controller. In view of the said fact, it is sought to be contended that the landlord cannot be permitted to take recourse to two proceedings at one and the same time.

I do not find any merit in the arguments raised by the learned counsel for the petitioner. The question whether the landlord can be permitted to raise dispute before the Arbitrator or whether the Arbitrator was justified in awarding the amount as claimed by the landlord or the fact of withdrawal of the petition under Section 13 of the Act, are the matters which are to be considered by the learned trial Court in the objections filed

by the petitioner. As admittedly, the petitioner is in possession of the ground floor of plot No. 5501, Cat-II, Modern Housing Complex, Mani Majra, Chandigarh, the petitioner cannot enjoy the possession of the same without payment of rent or damages for use and occupation of the premises.

Therefore, the condition imposed by the learned trial Court, cannot be said to be suffering from any patent illegality or irregularity, which may warrant interference by this Court in exercise of its revisional jurisdiction.

Hence, the present petition is dismissed.

04-12-2006 (HEMANT GUPTA)
ds JUDGE